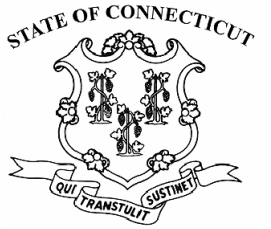

Substitute House Bill No. 6552

Public Act No. 11-236

AN ACT CONCERNING THE TRANSFER AND DISCHARGE OF NURSING FACILITY RESIDENTS AND AUDITS OF CERTAIN LONG-TERM CARE FACILITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 19a-535 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) For the purposes of this section: (1) "Facility" means **[**the**]** an entity certified as a nursing facility under the Medicaid program or **[**the**]** an entity certified as a skilled nursing facility under the Medicare program or with respect to facilities that do not participate in the Medicaid or Medicare programs, a chronic and convalescent nursing home or a rest home with nursing supervision as defined in section 19a-521; (2) **[**"Medicare distinct part" means an entity certified as a skilled nursing facility under the Medicare program within a facility**]** "continuing care facility which guarantees life care for its residents" has the same meaning as provided in section 17b-354; (3) "transfer" means the **[**transfer**]** movement of a resident from **[**a**]** one facility to **[**a separate facility, including a transfer into or out of a Medicare distinct part, but does not include the transfer of a resident from one bed to another bed within the same facility**]** another facility or institution, including, but not limited to, a hospital emergency department, if the

resident is admitted to the facility or institution or is under the care of the facility or institution for more than twenty-four hours; (4) "discharge" means the **[**discharge**]** movement of a resident from a facility to **[**another institution or**]** a noninstitutional setting; (5) "self-pay resident" means a resident who is not receiving state or municipal assistance to pay for the cost of care at a facility, but shall not include a resident who has filed an application with the Department of Social Services for Medicaid coverage for facility care but has not received an eligibility determination from the department on such application, provided the resident has timely responded to requests by the department for information that is necessary to make such determination; and (6) "emergency" means a situation in which a failure to effect an immediate transfer or discharge of the resident that would endanger the health, safety or welfare of the resident or other residents.

(b) A facility shall not transfer or discharge a **[**patient**]** resident from the facility except to meet the welfare of the **[**patient**]** resident which cannot be met in the facility, or unless the **[**patient**]** resident no longer needs the services of the facility due to improved health, the facility is required to transfer the resident pursuant to section 17b-359 or section 17b-360, or the health or safety of individuals in the facility is endangered, or in the case of a self-pay **[**patient**]** resident, for **[**his**]** the resident's nonpayment or arrearage of more than fifteen days of the per diem facility room rate, or the facility ceases to operate. In each case the basis for transfer or discharge shall be documented in the **[**patient's**]** resident's medical record by a physician. In each case where the welfare, health or safety of the **[**patient**]** resident is concerned the documentation shall be by the **[**patient's**]** resident's physician. A facility which is part of a continuing care facility which guarantees life care for its residents **[**, as defined in subsection (b) of section 17b-354,**]** may transfer or discharge (1) a **[**resident**]** self-pay **[**patient**]** resident who is a member of the continuing care community and who has

intentionally transferred assets in a sum which will render the **[**patient**]** resident unable to pay the costs of facility care in accordance with the contract between the resident and the facility, or (2) a **[**nonresident**]** self-pay **[**patient**]** resident who is not a member of the continuing care community and who has intentionally transferred assets in a sum which will render the **[**patient**]** resident unable to pay the costs of a total of forty-two months of facility care from the date of initial admission to the facility.

(c) (1) Before effecting **[**a**]** any transfer or discharge of a **[**patient**]** resident from the facility, the facility shall notify, in writing, the **[**patient**]** resident and the **[**patient's**]** resident's guardian or conservator, if any, or legally liable relative or other responsible party if known, of the proposed transfer or discharge, the reasons therefor, the effective date of the proposed transfer or discharge, the location to which the **[**patient**]** resident is to be transferred or discharged, the right to appeal the proposed transfer or discharge and the procedures for initiating such an appeal as determined by the Department of Social Services, the date by which an appeal must be initiated in order to preserve the resident's right to an appeal hearing and the date by which an appeal must be initiated in order to stay the proposed transfer or discharge **[**, which date shall be ten days from the receipt of the notice from the facility**]** and the possibility of an exception to the date by which an appeal must be initiated in order to stay the proposed transfer or discharge for good cause, that the **[**patient**]** resident may represent himself or herself or be represented by legal counsel, a relative, a friend or other **[**spokesman**]** spokesperson, and information as to bed hold and **[**hospital**]** nursing home readmission policy when **[**appropriate**]** required in accordance with section 19a-537, as amended by this act. The notice shall also include the name, mailing address and telephone number of the State Long-Term Care Ombudsman. If the **[**patient**]** resident is, or the facility alleges a **[**patient**]** resident is, mentally ill or developmentally disabled, the notice shall include the

name, mailing address and telephone number of the Office of Protection and Advocacy for Persons with Disabilities. The notice shall be given at least thirty days and no more than sixty days prior to the **[**patient's**]** resident's proposed transfer or discharge, except where the health or safety of individuals in the facility are endangered, or where the **[**patient's**]** resident's health improves sufficiently to allow a more immediate transfer or discharge, or where immediate transfer or discharge is necessitated by urgent medical needs or where a **[**patient**]** resident has not resided in the facility for thirty days, in which cases notice shall be given as many days before the transfer or discharge as practicable.

(2) The resident may initiate an appeal pursuant to this section by submitting a written request to the Commissioner of Social Services not later than sixty calendar days after the facility issues the notice of the proposed transfer or discharge, except as provided in subsection (h) of this section. In order to stay a proposed transfer or discharge, the resident must initiate an appeal not later than twenty days after the date the resident receives the notice of the proposed transfer or discharge from the facility unless the resident demonstrates good cause for failing to initiate such appeal within the twenty-day period.

(d) No **[**patient**]** resident shall be transferred or discharged from any facility as a result of a change in **[**his**]** the resident's status from self-pay or Medicare to Medicaid provided the facility offers services to both categories of **[**patients**]** residents. Any such **[**patient**]** resident who wishes to be transferred to another facility which has agreed to accept **[**him**]** the resident may do so upon giving at least fifteen days written notice to the administrator of the facility from which **[**he**]** the resident is to be transferred and a copy thereof to the appropriate advocate of such **[**patient**]** resident. The **[**patients'**]** resident's advocate may help the **[**patient**]** resident complete all administrative procedures relating to a transfer. **[**As used in this section "self-pay" patient means a patient who

is not receiving state or municipal assistance to pay for the cost of care.**]**

(e) Except **[**(1)**]** in an emergency **[**, (2)**]** or in the case of transfer to a hospital, **[**or (3) in the case of transfer into or out of a Medicare distinct part within the same institution, no patient**]** no resident shall be transferred or discharged from a facility unless a discharge plan has been developed by the personal physician of the **[**patient**]** resident or the medical director in conjunction with the nursing director, social worker or other health care provider. To minimize the disruptive effects of the transfer or discharge on the **[**patient**]** resident, the person responsible for developing the plan shall consider the feasibility of placement near the **[**patient's**]** resident's relatives, the acceptability of the placement to the **[**patient**]** resident and **[**his**]** the resident's guardian or conservator, if any, or **[**his**]** the resident's legally liable relative or other responsible party, if known, and any other relevant factors which affect the **[**patient's**]** resident's adjustment to the move. The plan shall contain a written evaluation of the effects of the transfer or discharge on the **[**patient**]** resident and a statement of the action taken to minimize such effects. In addition, the plan shall outline the care and kinds of services which the **[**patient**]** resident shall receive upon transfer or discharge. Not less than thirty days prior to an involuntary transfer or discharge, a copy of the discharge plan shall be provided to the **[**patient's**]** resident's personal physician if the discharge plan was prepared by the medical director, to the **[**patient and his**]** resident and the resident's guardian or conservator, if any, or **[**his**]** legally liable relative or other responsible party, if known.

(f) No **[**patient**]** resident shall be involuntarily transferred or discharged from a facility if such transfer or discharge is medically contraindicated.

(g) The facility shall be responsible for assisting the **[**patient**]** resident in finding appropriate placement.

(h) (1) Except in the case of an emergency, as provided in subdivision (4) of this subsection, upon receipt of a request for a hearing to appeal any proposed transfer or discharge, the Commissioner of Social Services or **[**his**]** the commissioner's designee shall hold a hearing to determine whether the transfer or discharge is being effected in accordance with this section. A hearing shall be convened not less than ten, but not more than thirty days from the date of receipt of such request and a written decision made by the commissioner or **[**his**]** the commissioner's designee **[**within sixty days of the**]** not later than thirty days after the date of termination of the hearing or **[**within ninety days of**]** not later than sixty days after the date of the hearing request, whichever occurs sooner. The hearing shall be conducted in accordance with chapter 54. In each case the facility shall prove by a preponderance of the evidence that it has complied with the provisions of this section. Except in the case of an emergency or in circumstances when the resident is not physically present in the facility, whenever the Commissioner of Social Services receives a request for a hearing in response to a notice of proposed transfer or discharge and such notice does not meet the requirements of subsection (c) of this section, the commissioner shall, not later than ten business days after the date of receipt of such notice from the resident or the facility, order the transfer or discharge stayed and return such notice to the facility. Upon receipt of such returned notice, the facility shall issue a revised notice that meets the requirements of subsection (c) of this section.

(2) The **[**patient, his**]** resident, the resident's guardian, conservator, legally liable relative or other responsible party shall have an opportunity to examine, during regular business hours at least three business days prior to a hearing conducted pursuant to this section, the contents of the **[**patient's**]** resident's file maintained by the facility and all documents and records to be used by the commissioner or **[**his**]** the commissioner's designee or the facility at the hearing. The facility

shall have an opportunity to examine during regular business hours at least three business days prior to such a hearing, all documents and records to be used by the **[**patient**]** resident at the hearing.

(3) If a hearing conducted pursuant to this section involves medical issues, the commissioner or **[**his**]** the commissioner's designee may order an independent medical assessment of the **[**patient**]** resident at the expense of the Department of Social Services which shall be made part of the hearing record.

(4) In an emergency the notice required pursuant to subsection (c) of this section shall be provided as soon as practicable. **[**For the purposes of this section "emergency" means that a failure to effect an immediate transfer or discharge would endanger the health, safety or welfare of the patient or other patients. A patient**]** A resident who is transferred or discharged on an emergency basis or a **[**patient**]** resident who receives notice of such a transfer or discharge may contest the action by requesting a hearing in writing **[**within ten**]** not later than twenty days **[**of**]** after the date of receipt of notice or **[**within ten**]** not later than twenty days **[**of**]** after the date of transfer or discharge, whichever is later, unless the resident demonstrates good cause for failing to request a hearing within the twenty-day period. A hearing shall be held in accordance with the requirements of this subsection **[**within seven**]** not later than fifteen business days **[**of**]** after the date of receipt of the request. The commissioner, or the commissioner's designee, shall issue a decision not later than thirty days after the date on which the hearing record is closed.

(5) Except in the case of a transfer or discharge effected pursuant to subdivision (4) of this subsection, (A) an involuntary transfer or discharge shall be stayed pending a decision by the commissioner or **[**his**]** the commissioner's designee, and (B) if the commissioner or **[**his**]** the commissioner's designee determines the transfer or discharge is being effected in accordance with this section, the facility may not

transfer or discharge the **[**patient**]** resident prior to fifteen days from the date of receipt of the decision by the **[**patient**]** resident and **[**his**]** the resident's guardian or conservator, if any, or **[**his**]** the resident's legally liable relative or other responsible party if known.

(6) If the commissioner, or the commissioner's designee, determines after a hearing held in accordance with this section that the facility has transferred or discharged a resident in violation of this section, the commissioner, or the commissioner's designee, may require the facility to readmit the resident to a bed in a semiprivate room or in a private room, if a private room is medically necessary, regardless of whether or not the resident has accepted placement in another facility pending the issuance of a hearing decision or is awaiting the availability of a bed in the facility from which the resident was transferred or discharged.

[(6)**]** (7) A copy of a decision of the commissioner or **[**his**]** the commissioner's designee shall be sent to the facility and to the resident, the resident's guardian, conservator, if any, legally liable relative or other responsible party, if known. The decision shall be deemed to have been received **[**within five days of**]** not later than five days after the date it was mailed, unless the **[**patient or his**]** facility, the resident or the resident's guardian, conservator, legally liable relative or other responsible party proves otherwise by a preponderance of the evidence. The Superior Court shall consider an appeal from a decision of the Department of Social Services pursuant to this section as a privileged case in order to dispose of the case with the least possible delay.

(i) A resident who receives notice from the Department of Social Services or its agent that the resident is no longer in need of the level of care provided by a facility and that, consequently, the resident's coverage for facility care will end, may request a hearing by the Commissioner of Social Services in accordance with the provisions of

section 17b-60. If the resident requests a hearing prior to the date that Medicaid coverage for facility care is to end, Medicaid coverage shall continue pending the outcome of the hearing. If the resident receives a notice of denial of Medicaid coverage from the department or its agent and also receives a notice of discharge from the facility pursuant to subsection (c) of this section and the resident requests a hearing to contest each proposed action, the department may schedule one hearing at which the resident may contest both actions.

Sec. 2. Section 19a-537 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) As used in this section and section 19a-537a:

(1) "Vacancy" means a bed that is available for an admission;

(2) "Nursing home" means any chronic and convalescent facility or any rest home with nursing supervision, as defined in section 19a-521;

(3) "Hospital" means a general short-term hospital licensed by the Department of Public Health or a hospital for mental illness, as defined in section 17a-495, or a chronic disease hospital, as defined in section 19-13-D1(a) of the Public Health Code.

(b) A nursing home shall:

(1) Reserve the bed of a self-pay resident of such facility who is absent from the facility due to hospitalization whenever payment is available to reserve the bed;

(2) Inform the self-pay resident and such resident's relatives or other responsible persons, upon admission of a person to the facility and upon transfer of a resident to a hospital, that the bed of a resident will be reserved as long as payment is available to the facility to reserve the bed and that if payment is not made, the resident will be admitted to

the next available bed in accordance with subsection (e) of this section;

(3) Reserve the bed of a resident who is a recipient of medical assistance when the resident is absent from the facility for home leave days authorized under the Medicaid program;

(4) Inform the resident who is a recipient of medical assistance and such resident's relatives or other responsible persons, upon admission of a person to the nursing home and upon transfer of a resident to a hospital of the conditions under which **[**the Department of Social Services requires**]** the nursing home is required to reserve the bed of a resident and that if the home is not required to reserve the bed, the resident will be admitted to the next available bed in accordance with subsection (e) of this section; and

(5) Not make the bed reserved for a hospitalized resident available for use by any other person unless the nursing home records in such resident's medical record the medical reasons justifying the change in such resident's bed, and the necessity of making the change before the resident's return to the facility, provided no resident's bed shall be changed if (A) such a change is medically contraindicated as defined in subsection (a) of section 19a-550; or (B) if the resident does not consent to the change, except when the change is made (i) to protect the resident or others from physical harm; (ii) to control the spread of an infectious disease; or (iii) to respond to a physical plant or environmental emergency that threatens the resident's health or safety. In the case of such an involuntary change of a resident's bed, disruption of residents shall be minimized, notice shall be provided to the resident or representative **[**within**]** not later than twenty-four hours after the change and, if practicable, the resident, if he or she wishes, shall be returned to his or her room when the threat to health or safety which prompted the transfer has been eliminated. When a resident's bed is changed without his or her consent to protect the resident or others from physical harm, a consultative process shall be established

on the first business day following the resident's return to the facility. The consultative process shall include the participation of the attending physician, a registered nurse with responsibility for the resident, other appropriate staff in disciplines as determined by the resident's needs and the participation of the resident, such resident's family or other representative. The consultative process shall determine what caused the change in bed, whether the cause can be removed and, if not, whether the facility has attempted alternatives to the change. The resident shall be informed of the risks and benefits of the change in bed and of any alternatives.

(c) A nursing home shall reserve, for at least fifteen days, the bed of a resident who is a recipient of medical assistance and who is absent from such home due to hospitalization unless the nursing home documents that it has objective information from the hospital confirming that the **[**patient**]** resident will not return to the nursing home within fifteen days of the hospital admission including the day of hospitalization.

(d) The Department of Social Services shall reimburse a nursing home at the per diem Medicaid rate of the facility for each day that the facility reserves the bed of a resident who is a recipient of medical assistance in accordance with the following conditions:

(1) A facility shall be reimbursed for reserving the bed of a resident who is hospitalized for a maximum of seven days including the admission date of hospitalization, if on such date the nursing home documents that (A) it has a vacancy rate of not more than three beds or three per cent of licensed capacity, whichever is greater, and (B) it contacted the hospital and the hospital failed to provide objective information confirming that the person would be unable to return to the nursing home within fifteen days of the date of hospitalization.

(2) The nursing home shall be reimbursed for a maximum of eight

additional days provided:

(A) On the seventh day of the person's hospital stay, the nursing home has a vacancy rate that is not more than three beds or three per cent of licensed capacity, whichever is greater; and

(B) **[**Within seven days of the**]** Not later than seven days after the date of hospitalization of a resident who is a recipient of medical assistance, the nursing home has contacted the hospital for an update on the person's status and the nursing home documents such contact in the person's file and that the information obtained through the contact does not indicate that the person will be unable to return to the nursing home **[**within fifteen days of**]** not later than fifteen days after the date of hospitalization.

(3) A facility shall be reimbursed for reserving the bed of a resident who is absent for up to twenty-one days of home leave as authorized under the Medicaid program if on the day of such an absence the facility documents that it has a vacancy rate of not more than four beds or four per cent of licensed capacity, whichever is greater. No facility shall require or request a resident who is a recipient of medical assistance to provide payment for such authorized home leave days, whether or not such payment is available from the department.

(e) If a resident's hospitalization exceeds the period of time that a nursing home is required to reserve the resident's bed or the nursing home is not required to reserve the resident's bed under this section, the nursing home:

(1) Shall, upon receipt of notification from the hospital that a resident is medically ready for discharge, provide the resident with the first bed available **[**at the time the nursing home receives notice of the resident's discharge from the hospital**]** in a semiprivate room or a private room, if a private room is medically necessary;

(2) Shall grant the resident priority of admission over applicants for first admission to the nursing home;

(3) May charge a fee to reserve the bed, not exceeding the facility's self-pay rate for the unit in which that resident resided, or not exceeding the per diem Medicaid rate for recipients of medical assistance, whichever charge is applicable, for the number of days which the resident is absent from the facility.

(f) When the Commissioner of Social Services, or the commissioner's designee, makes a finding that a resident has been refused readmission to a nursing home in violation of this section, the resident shall retain the right to be readmitted to the transferring nursing home pursuant to subsection (e) of this section regardless of whether or not the resident has accepted placement in another nursing home while awaiting the availability of a bed in the facility from which the resident was transferred.

(g) Whenever a nursing home has concerns about the readmission of a resident, as required by subsection (e) of this section, based on whether the nursing home has the ability to meet the resident's care needs or the resident presents a danger to himself or herself or to other persons, not later than twenty-four hours after receipt of notification from a hospital that a resident is medically ready for discharge, a nursing home shall request a consultation with the hospital and the resident or the resident's representative. The purpose of the consultation shall be to develop an appropriate care plan to safely meet the resident's nursing home care needs, including a determination of the date for readmission that best meets such needs. The resident's wishes and the hospital's recommendations shall be considered as part of the consultation process. The nursing home shall reserve the resident's bed until completion of the consultation process. The consultation process shall begin as soon as practicable and shall be completed not later than three business days after the date of the

nursing home's request for a consultation. The hospital shall participate in the consultation, grant the nursing home access to the resident in the hospital and permit the nursing home to review the resident's hospital records.

(h) A nursing home shall not refuse to readmit a resident unless: (1) The resident's needs cannot be met in the facility; (2) the resident no longer needs the services of the nursing home due to improved health; or (3) the health and safety of individuals in the nursing home would be endangered by readmission of the resident. If a nursing home decides to refuse to readmit a resident either without requesting a consultation or following a consultation conducted in accordance with subsection (g) of this section, the nursing home shall, not later than twenty-four hours after making such decision, notify the hospital, the resident and the resident's guardian or conservator, if any, the resident's legally liable relative or other responsible party, if known, in writing of the following: (A) The determination to refuse to readmit the resident; (B) the reasons for the refusal to readmit the resident; (C) the resident's right to appeal the decision to refuse to readmit the resident; (D) the procedures for initiating such an appeal, as determined by the Commissioner of Social Services; (E) the resident has twenty days from the date of receipt of the notice from the facility to initiate an appeal; (F) the possibility of an extension of the timeframe for initiating an appeal for good cause; (G) the contact information, including the name, mailing address and telephone number, for the Long-Term Care Ombudsman; and (H) the resident's right to represent himself or herself at the appeal hearing or to be represented by legal counsel, a relative, a friend or other spokesperson. If a resident is, or the nursing home alleges a resident is, mentally ill or developmentally disabled, the nursing home shall include in the notice to the resident the contact information, including the name, mailing address and telephone number of the Office of Protection and Advocacy for Persons with Disabilities. The Commissioner of Social Services, or the

commissioner's designee, shall hold a hearing in accordance with chapter 54 to determine whether the nursing home has violated the provisions of this section. The commissioner, or the commissioner's designee, shall convene such hearing not later than fifteen days after the date of receipt of the request. The commissioner, or the commissioner's designee, shall issue a decision not later than thirty days after the date on which the hearing record is closed. The commissioner, or the commissioner's designee, may require the nursing home to readmit the resident to a semiprivate room or a private room, if a private room is medically necessary. The Superior Court shall consider an appeal from a decision of the commissioner pursuant to this section as a privileged case in order to dispose of the case with the least possible delay.

(i) If, following a consultation convened pursuant to subsection (g) of this section, a nursing home does not readmit a resident, the resident may file a complaint with the Commissioner of Social Services pursuant to section 19a-537a. If the resident has requested a hearing pursuant to subsection (h) of this section, the commissioner shall stay an investigation of such complaint until the issuance of a determination following the hearing. Each day a nursing home fails to readmit a resident in violation of this section may be considered a separate violation for the purpose of determining a penalty pursuant to section 19a-537a, except no penalty shall accrue during the period of time beginning with the date a consultation is requested until the date a hearing decision is issued, if a hearing is requested, provided the commissioner, or the commissioner's designee, finds the nursing home has acted in good faith in refusing to readmit the resident. If the resident does not request a hearing and the resident files a complaint with the commissioner pursuant to section 19a-537a, no penalty shall accrue during the time an investigation is conducted, provided the commissioner finds the facility acted in good faith in refusing to readmit the resident.

Sec. 3. Section 19a-545 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) A receiver appointed pursuant to the provisions of sections 19a-541 to 19a-549, inclusive, in operating such facility, shall have the same powers as a receiver of a corporation under section 52-507, except as provided in subsection (c) of this section and shall exercise such powers to remedy the conditions which constituted grounds for the imposition of receivership, assure adequate health care for the **[**patients**]** residents and preserve the assets and property of the owner. If a facility is placed in receivership it shall be the duty of the receiver to notify **[**patients and family, except where medically contraindicated**]** each resident and each resident's guardian or conservator, if any, or legally liable relative or other responsible party, if known. Such receiver may correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the safety or health of the residents while they remain in the facility, provided the total cost of correction does not exceed three thousand dollars. The court may order expenditures for this purpose in excess of three thousand dollars on application from such receiver. If any resident is transferred or discharged such receiver shall provide for: (1) Transportation of the resident and such resident's belongings and medical records to the place where such resident is being transferred or discharged; (2) aid in locating an alternative placement and discharge planning in accordance with section 19a-535, as amended by this act; (3) preparation for transfer to mitigate transfer trauma, including but not limited to, participation by the resident or the resident's guardian in the selection of the resident's alternative placement, explanation of alternative placements and orientation concerning the placement chosen by the resident or the resident's guardian; and (4) custodial care of all property or assets of residents which are in the possession of an owner of the facility. The receiver shall preserve all property, assets and records of residents which the receiver has custody of and shall

provide for the prompt transfer of the property, assets and records to the alternative placement of any transferred resident. In no event may the receiver transfer all residents and close a facility without a court order and without **[**preparing a**]** complying with the notice and discharge plan requirements for each resident in accordance with section 19a-535, as amended by this act.

(b) Not later than ninety days after the date of appointment as a receiver, such receiver shall take all necessary steps to stabilize the operation of the facility in order to ensure the health, safety and welfare of the residents of such facility. In addition, within a reasonable time period after the date of appointment, not to exceed six months, the receiver shall: (1) Determine whether the facility can continue to operate and provide adequate care to residents in substantial compliance with applicable federal and state law within the facility's state payments as established by the Commissioner of Social Services pursuant to subsection (f) of section 17b-340, together with income from self-pay residents, Medicare payments and other current income and shall report such determination to the court; and (2) seek facility purchase proposals. If the receiver determines that the facility will be unable to continue to operate in compliance with said requirements, the receiver shall promptly request an order of the court to close the facility and make arrangements for the orderly transfer of residents pursuant to subsection (a) of this section unless the receiver determines that a transfer of the facility to a qualified purchaser is expected during the six-month period commencing on the date of the receiver's appointment. If a transfer is not completed within such period and all purchase and sale proposal efforts have been exhausted, the receiver shall request an immediate order of the court to close the facility and make arrangements for the orderly transfer of residents pursuant to subsection (a) of this section.

(c) The court may limit the powers of a receiver appointed pursuant

to the provisions of sections 19a-541 to 19a-549, inclusive, to those necessary to solve a specific problem.

Sec. 4. Section 19a-504c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

[By October 1, 1989, the**]** The Department of Public Health shall adopt regulations, in accordance with the provisions of chapter 54, to set minimum standards for hospital discharge planning services. Such standards shall include, but not necessarily be limited to, requirements for (1) a written discharge plan prepared in consultation with the patient, or **[**his**]** the patient's family or representative, and the patient's physician, and (2) a procedure for advance notice to the patient of **[**his**]** the patient's discharge and provision of a copy of the discharge plan to the patient prior to discharge. Whenever a hospital refers a patient's name to a nursing home as part of the hospital's discharge planning process, or when a hospital patient requests such a referral, the hospital shall make a copy of the patient's hospital record available to the nursing home and shall allow the nursing home access to the patient for purposes of care planning and consultation.

Sec. 5. Subsection (d) of section 17b-99 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(d) The Commissioner of Social Services, or any entity with whom the commissioner contracts, for the purpose of conducting an audit of a service provider that participates as provider of services in a program operated or administered by the department pursuant to this chapter or chapter 319t, 319v, 319y or 319ff, except a service provider for which rates are established pursuant to section 17b-340, shall conduct any such audit in accordance with the provisions of this subsection. For purposes of this subsection "provider" means a person, public agency, private agency or proprietary agency that is licensed,

certified or otherwise approved by the commissioner to supply services authorized by the programs set forth in said chapters.

(1) Not less than thirty days prior to the commencement of any such audit, the commissioner, or any entity with whom the commissioner contracts to conduct an audit of a participating provider, shall provide written notification of the audit to such provider, unless the commissioner, or any entity with whom the commissioner contracts to conduct an audit of a participating provider makes a good faith determination that (A) the health or safety of a recipient of services is at risk; or (B) the provider is engaging in vendor fraud. A copy of the regulations established pursuant to subdivision (11) of this subsection shall be appended to such notification.

(2) Any clerical error, including, but not limited to, recordkeeping, typographical, scrivener's or computer error, discovered in a record or document produced for any such audit, shall not of itself constitute a wilful violation of program rules unless proof of intent to commit fraud or otherwise violate program rules is established.

(3) A finding of overpayment or underpayment to a provider in a program operated or administered by the department pursuant to this chapter or chapter 319t, 319v, 319y or 319ff, except a provider for which rates are established pursuant to section 17b-340, shall not be based on extrapolated projections unless (A) there is a sustained or high level of payment error involving the provider, (B) documented educational intervention has failed to correct the level of payment error, or (C) the value of the claims in aggregate exceeds one hundred fifty thousand dollars on an annual basis.

(4) A provider, in complying with the requirements of any such audit, shall be allowed not less than thirty days to provide documentation in connection with any discrepancy discovered and brought to the attention of such provider in the course of any such

audit.

(5) The commissioner, or any entity with whom the commissioner contracts, for the purpose of conducting an audit of a provider of any of the programs operated or administered by the department pursuant to this chapter or chapter 319t, 319v, 319y or 319ff, except a service provider for which rates are established pursuant to section 17b-340, shall produce a preliminary written report concerning any audit conducted pursuant to this subsection, and such preliminary report shall be provided to the provider that was the subject of the audit, not later than sixty days after the conclusion of such audit.

(6) The commissioner, or any entity with whom the commissioner contracts, for the purpose of conducting an audit of a provider of any of the programs operated or administered by the department pursuant to this chapter or chapter 319t, 319v, 319y or 319ff, except a service provider for which rates are established pursuant to section 17b-340, shall, following the issuance of the preliminary report pursuant to subdivision (5) of this subsection, hold an exit conference with any provider that was the subject of any audit pursuant to this subsection for the purpose of discussing the preliminary report.

(7) The commissioner, or any entity with which the commissioner contracts, for the purpose of conducting an audit of a service provider, shall produce a final written report concerning any audit conducted pursuant to this subsection. Such final written report shall be provided to the provider that was the subject of the audit not later than sixty days after the date of the exit conference conducted pursuant to subdivision (6) of this subsection, unless the commissioner, or any entity with which the commissioner contracts, for the purpose of conducting an audit of a service provider, agrees to a later date or there are other referrals or investigations pending concerning the provider.

(8) Any provider aggrieved by a decision contained in a final written report issued pursuant to subdivision (7) of this subsection, may, not later than thirty days after the receipt of the final report, request, in writing, a review on all items of aggrievement. Such request shall contain a detailed written description of each specific item of aggrievement. The designee of the commissioner who presides over the review shall be impartial and shall not be an employee of the Department of Social Services Office of Quality Assurance or an employee of an entity with whom the commissioner contracts for the purpose of conducting an audit of a service provider. Following review on all items of aggrievement, the designee of the commissioner who presides over the review shall issue a final decision.

(9) **[**The**]** A provider **[**shall have the right to**]** may appeal a final decision issued pursuant to subdivision (8) of this subsection to the Superior Court in accordance with the provisions of chapter 54.

(10) The provisions of this subsection shall not apply to any audit conducted by the Medicaid Fraud Control Unit established within the Office of the Chief State's Attorney.

(11) The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to carry out the provisions of this subsection and to ensure the fairness of the audit process, including, but not limited to, the sampling methodologies associated with the process.

Sec. 6. (NEW) (*Effective from passage*) (a) (1) For purposes of this section "facility" means any facility described in this subsection and for which rates are established pursuant to section 17b-340 of the general statutes.

(2) The Commissioner of Social Services shall conduct any audit of a licensed chronic and convalescent nursing home, chronic disease

hospital associated with a chronic and convalescent nursing home, a rest home with nursing supervision, a licensed residential care home, as defined by section 19a-490 of the general statutes, and a residential facility for the mentally retarded which is licensed pursuant to section 17a-227 of the general statutes and certified to participate in the Title XIX Medicaid program as an intermediate care facility for the mentally retarded in accordance with the provisions of this section.

(b) Not less than thirty days prior to the commencement of any such audit, the commissioner shall provide written notification of the audit to such facility, unless the commissioner makes a good-faith determination that (1) the health or safety of a recipient of services is at risk; or (2) the facility is engaging in vendor fraud under sections 53a-290 to 53a-296, inclusive, of the general statutes.

(c) Any clerical error, including, but not limited to, recordkeeping, typographical, scrivener's or computer error, discovered in a record or document produced for any such audit, shall not of itself constitute a wilful violation of the rules of a medical assistance program administered by the Department of Social Services unless proof of intent to commit fraud or otherwise violate program rules is established.

(d) A finding of overpayment or underpayment to such facility, shall not be based on extrapolated projections unless (1) there is a sustained or high level of payment error involving the facility, (2) documented educational intervention has failed to correct the level of payment error, or (3) the value of the claims in aggregate exceeds one hundred fifty thousand dollars on an annual basis.

(e) A facility, in complying with the requirements of any such audit, shall be allowed not less than thirty days to provide documentation in connection with any discrepancy discovered and brought to the attention of such facility in the course of any such audit.

(f) The commissioner shall produce a preliminary written report concerning any audit conducted pursuant to this section and such preliminary report shall be provided to the facility that was the subject of the audit not later than sixty days after the conclusion of such audit.

(g) The commissioner shall, following the issuance of the preliminary report pursuant to subsection (f) of this section, hold an exit conference with any facility that was the subject of any audit pursuant to this subsection for the purpose of discussing the preliminary report.

(h) The commissioner shall produce a final written report concerning any audit conducted pursuant to this subsection. Such final written report shall be provided to the facility that was the subject of the audit not later than sixty days after the date of the exit conference conducted pursuant to subsection (g) of this section, unless the commissioner and the facility agree to a later date or there are other referrals or investigations pending concerning the facility.

(i) Any facility aggrieved by a final report issued pursuant to subsection (h) of this section may request a rehearing. A rehearing shall be held by the commissioner or the commissioner's designee, provided a detailed written description of all items of aggrievement in the final report is filed by the facility not later than ninety days following the date of written notice of the commissioner's decision. The rehearing shall be held not later than thirty days following the date filing of the detailed written description of each specific item of aggrievement. The commissioner shall issue a final decision not later than sixty days following the close of evidence or the date on which final briefs are filed, whichever occurs later. Any items not resolved at such rehearing to the satisfaction of the facility or the commissioner shall be submitted to binding arbitration by an arbitration board consisting of one member appointed by the facility, one member appointed by the commissioner and one member appointed by the

Chief Court Administrator from among the retired judges of the Superior Court, which retired judge shall be compensated for his services on such board in the same manner as a state referee is compensated for his services under section 52-434 of the general statutes. The proceedings of the arbitration board and any decisions rendered by such board shall be conducted in accordance with the provisions of the Social Security Act, 42 USC 1396, as amended from time to time, and chapter 54 of the general statutes.

(j) The submission of any false or misleading fiscal information or data to the commissioner shall be grounds for suspension of payments by the state under sections 17b-239 to 17b-246, inclusive, of the general statutes and sections 17b-340 and 17b-343, inclusive, of the general statutes in accordance with regulations adopted by the commissioner. In addition, any person, including any corporation, who knowingly makes or causes to be made any false or misleading statement or who knowingly submits false or misleading fiscal information or data on the forms approved by the commissioner shall be guilty of a class D felony.

(k) The commissioner, or any agent authorized by the commissioner to conduct any inquiry, investigation or hearing under the provisions of this section, shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the commissioner, the commissioner or such agent having authority by law to issue such process may subpoena witnesses and require the production of records, papers and documents pertinent to such inquiry. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to the person by the commissioner or the commissioner's authorized agent or to produce any records and papers pursuant thereto, the commissioner or the commissioner's agent may apply to the superior court for the judicial district of Hartford or for

the judicial district wherein the person resides or wherein the business has been conducted, or to any judge of such court if the same is not in session, setting forth such disobedience to process or refusal to answer, and such court or judge shall cite such person to appear before such court or judge to answer such question or to produce such records and papers.

Approved July 13, 2011